

**DIVISION OF CONSOLIDATED LABORATORY SERVICES  
DEPARTMENT OF GENERAL SERVICES**

**SUPPLEMENTAL NOTICE OF INTENDED REGULATORY ACTION**

The Division of Consolidated Laboratory Services is providing a supplemental notice of intended regulatory action on its intention to propose for adoption a Regulation for Environmental Laboratory Certification. *In addition to laboratories performing tests and analyses required by the Virginia Waste Management Act and the State Water Control Law, § 2.1-429.01 of the Code of Virginia requires that laboratories performing tests and analyses under § 10.1-1300 et seq. (the Air Pollution Control Law) also be covered.* This supplemental notice relates only to the coverage by an environmental laboratory certification program of laboratories performing tests and analyses under § 10.1-1300 et seq. (the Air Pollution Control Law). This supplemental notice provides an additional 30-day comment period on the inclusion of these laboratories in the program, including a public meeting. In addition, the notice provides an opportunity for additional volunteers to join the currently formed ad hoc group. Specific information on submitting comments, attending the public meeting, and volunteering for the ad hoc group is set out below.

The Division has previously provided notice of its intention to propose for adoption a regulation for environmental laboratory certification (Volume 14, Issue 25 of the *Virginia Register*, page 4032; 8/31/98). This regulation will establish procedures, standards and requirements for the certification of laboratories performing tests and analyses required by the Virginia Air Pollution Control Law, the Virginia Waste Management Act and the State Water Control Law. The program established by the regulation will ensure that these laboratories provide accurate and consistent tests, analyses, measurements and monitoring. Commercial, private, industrial and municipal laboratories conducting tests, analyses, measurements or monitoring pursuant to the Virginia Air Pollution Control Law (§10.1-1300 et seq.), the Virginia Waste Management Act (§10.1-1400 et seq.), or the State Water Control Law (§62.1-44.2 et seq.) would be affected by the program.

**PUBLIC PARTICIPATION INFORMATION**

**REQUEST FOR COMMENTS**

The purpose of this notice is to solicit comments on the inclusion of laboratories performing tests and analyses under the Virginia Air Pollution Control Law (§10.1-1300 et seq.). THERE ARE NO REGULATION AMENDMENTS AVAILABLE FOR PUBLIC COMMENT AT THIS TIME. All comments must be received by the agency contact by 4:30 p.m. on Wednesday, January 20, 1999 in order to be considered. It is preferred that all comments be provided in writing, along with any supporting documents or exhibits; however, oral comments will be accepted at the meeting. Comments may be submitted by mail, by facsimile transmission (fax number: 804/371-7973), or by personal appearance at the meeting mentioned below. See "Agency Contact" below for the mailing address. Facsimile copies will be accepted only if followed by receipt of the original within one week. All comments, exhibits and documents received are a matter of public record.

**PUBLIC MEETING**

A public meeting will be held by the Division in the First Floor Conference Room, Division of Consolidated Laboratory Services, 1 North 14th Street, Richmond, Virginia, 23219, at 10:00 a.m. on Thursday, January 14, 1999, to discuss the intended action. Unlike a public hearing, which is intended only to receive testimony, this meeting is being held to discuss and exchange ideas and information relative to regulation development.

### **AD HOC ADVISORY GROUP**

The Department has formed an ad hoc advisory group to assist in the development of the regulation. However, the group has not yet had its first meeting. If you believe that your interests relate directly to those of laboratories performing tests and analyses under the Virginia Air Pollution Control Law and you desire to be on the group, notify the agency contact in writing or by facsimile transmission (fax number: 804/371-7973) by 4:30 p.m., January 20, 1999 and provide your name, address, phone number and the organization you represent (if any). See "Agency Contact" below for the mailing address. Two additional places on the currently formed ad hoc group will be made available for volunteers. Notification of the selection of the new, additional ad hoc advisory group members will be sent to all applicants. The primary function of the group is to develop recommended regulation amendments for Department consideration through the collaborative approach of regulatory negotiation and consensus.

### **AGENCY CONTACT**

The Division contact for any questions about this notice is:

Nancy S. Saylor  
Consultant to  
Division of Consolidated Laboratory Services  
1 North 14th Street  
Richmond, Virginia 23219  
Phone: (804) 231-7980

### **SUPPORTING INFORMATION**

#### **NEED**

The contemplated regulation is essential (i) to protect the health, safety or welfare of citizens and (ii) for the efficient and economic performance of an important governmental function. The reasoning for this conclusion is set forth below.

Compliance with the State Water Control Law, the Air Pollution Control Law and the Virginia Waste Management Act is determined, to a great extent, by the analysis of samples and other measurements taken of Virginia's water, air and terrain. Accurate and consistent analysis of these samples ensures that the determination of compliance with Virginia's water quality, air quality and waste management laws is also accurate and consistent. In turn, the health and welfare of the people of the Commonwealth are protected. And, in addition, samples from those parties whose compliance is being determined are analyzed in an equally consistent and accurate fashion.

Certifying laboratories that do consistent and accurate analyses ensures efficient and economic implementation of the state's water, air and waste laws. The state agency responsible for carrying out the laws will be assured that they can rely upon the analytical results of certified laboratories in determining compliance with these laws.

In addition, the state law requires the use of nationally accepted accreditation standards. Virginia's water quality, air quality and waste management laws and regulations are mandated in part by federal statute and regulation. Because the federal government funds the implementation of these laws in the state to some extent, it also determines whether the state agency carrying out these federal mandates is doing an acceptable job. An accurate, consistent and verifiable analysis in certified laboratories of samples taken to determine compliance provides assurance of the state's competency in implementing federal mandates on water quality, air quality and waste management.

#### **ALTERNATIVES**

Alternatives to the proposed regulation amendments being considered by the Department are discussed below.

1. Develop the regulation to satisfy the provisions of the law and federal standards and policies. This option is being selected because it meets the stated purpose of the regulatory action: to

ensure that laboratories perform accurate and consistent tests, analyses, measurements and monitoring required by the Virginia Waste Management Act, Virginia Air Pollution Control Law and the State Water Control Law.

2. Make alternative regulatory changes to those required by the provisions of the law and federal standards and policies. This option is not being selected because it does not meet the stated purpose of the regulation and may not be consistent with state law and federal standards and policies.

3. Take no action to develop the regulation. This option is not being selected because state law requires that a regulation be developed.

### **STATUTORY AUTHORITY**

The authority for the adoption of the regulation is §2.1-424 A4 of the Code of Virginia which authorizes the Department of General Services and its divisions to “prescribe rules and regulations necessary or incidental to the performance of duties or execution of powers conferred under this chapter [Title 2.1, Chapter 32].”

### **APPLICABLE STATUTORY REQUIREMENTS**

The contemplated regulation is mandated by state law. A succinct statement of the source (including legal citation) and scope of the mandate may be found below.

Section 2.1-429.01 of the Code of Virginia (Title 2.1, Chapter 32) requires that the Division of Consolidated Laboratory Services establish a program by regulation that will certify laboratories conducting tests, analyses, measurements, or monitoring pursuant to the Virginia Air Pollution Control Law (§10.1-1300 et seq.), the Virginia Waste Management Act (§10.1-1400 et seq.) or the State Water Control Law (§62.1-44.2 et seq.). The program is to be based on standards adopted by the National Environmental Laboratory Accreditation Conference sponsored by the U.S. Environmental Protection Agency to ensure accurate and consistent testing and analysis by the certified laboratories.

The state law requires that the program include minimum criteria for the following: (1) laboratory procedures; (2) performance evaluations; (3) supervisory and personnel requirements; (4) facilities and equipment; (5) analytical quality control and quality assurance; (6) certificate issuance and maintenance; (7) recertification and decertification; and (8) granting full and partial exemptions from the program based on compliance and performance. The law also requires that a fee system be established to pay for the costs of certifying laboratories under this program. Procedures for determining the qualifications of laboratories outside of Virginia used to conduct tests and analyses for use in Virginia must also be developed under §2.1-429.01. In addition, the law allows other components to be added to the program.